



MAINE REVENUE SERVICES

SALES/EXCISE TAX DIVISION

INSTRUCTIONAL BULLETIN NO. 39

"SALE PRICE" UPON WHICH TAX IS BASED

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

§1811 of the Sales and Use Tax Law levies a sales tax on sales of tangible personal property and taxable services "measured by the sales price". 1861 levies a similar use tax on purchases at retail sale where sales tax is not paid at the time of purchase. The tax is determined by applying the tax rate to the "sale price" of purchases for use or consumption in this State. 1752(14) defines the meaning of "sale price".

The purpose of this bulletin is to explain, on the basis of these statutory provisions, what is to be included in the sale price on which sales or use tax liability is based.

1. IN GENERAL.

a. The sale price on which sales tax is based includes:

- i. The full price, valued in money, whether paid in money or otherwise, including the value of traded in property. (See Section 2 of this bulletin).
- ii. The amount charged for any services that are a part of the sale, such as assembly, alteration or fabrication charges whether separately stated or not. (See Section 4 of this bulletin). Separately stated charges for installing or applying or repairing the property sold are not subject to tax unless they constitute a sale of "telephone or telegraph service". (See Section 5 of this bulletin).
- iii. Federal manufacturers' or importers' excise taxes with respect to automobiles, tires, firearms, tobacco, liquor, sporting goods, etc., even though this federal tax is separately stated.

- iv. Any charge for production, fabrication or processing of tangible personal property for persons who furnish, either directly or indirectly, the materials used in the production, fabrication or processing.

b. The sale price on which sales tax is based does not include:

- i. Cash discounts allowed by the seller and taken by the purchaser. (See Section 3 of this bulletin).
- ii. Separately stated charges for installing, applying or repairing the property sold, unless the property is telephone or telegraph equipment. (See Section 5a of this bulletin).
- iii. Separately stated charges for transportation of goods to the vendee by common or contract carrier or by mail. (See Section 5b of this bulletin).
- iv. Certain service charges in lieu of tips. (See Section 5c of this bulletin)

c. Partial or full credit may be taken by a retailer for transactions previously reported as taxable if:

- i. A refund or credit is allowed the purchaser pursuant to warranty. (See Section 6a of this bulletin).
- ii. The full purchase price is refunded to the purchaser upon return of the merchandise. (See Section 6b of this bulletin).

2. "SALE PRICE" IS TO BE MEASURED IN MONEY

Pursuant to the definition of "sale price", tax applies not only to cash sales, but also to credit sales, and to transactions where the sale price is paid in part or in whole by barter, rendition of services, or any other valuable consideration.

a. Trade-ins. When property is sold, with an allowance being made for traded-in property, tax applies to the entire sales price, including the allowance for trade-in. Thus, if a refrigerator is sold for \$800, the customer paying \$700 in cash and \$100 by way of allowance on a traded in refrigerator, tax is based on the full price of \$800.

However 1765 of the law provides an exception to this rule. When one of the following items is traded against another of the same kind, the allowance for trade-in is deducted from the sale price in computing the tax; motor vehicles, watercraft, aircraft, farm tractors, lumber harvesting vehicles or loaders, chain saws, special mobile equipment, live-stock trailers and camper trailers. More information on trade-in allowances is available in Instruction Bulletin #24, "Vehicle Dealers".

b. Core Charges. Customers who purchase certain property which can be reconditioned and resold by the seller are encouraged to bring their used property to the seller by being charged what is called a core charge. The core charge is usually refunded or credited to the customer when the used property is brought to the seller. Core charges are considered part of the selling price of the new property being purchased and is subject to tax. For instance, an alternator may be sold for \$80.00 with a core charge being stated in the amount of \$10.00. The total selling price subject to tax is \$90.00. If a used alternator is traded-in at the same time as the purchase of the new alternator, the selling price subject to tax remains at \$90.00 even though a \$10.00 credit is allowed. If the used alternator is returned to the seller at a later date and the customer is refunded the \$10.00 core charge, no refund of sales tax is allowed. The definition of "sale price" does not exclude an allowance of this sort nor are core charges allowable as trade-in credits.

3. CASH DISCOUNTS

The definition of "sale price" states that "discounts allowed and taken on sales" are not included in the "sale price".

Thus, if a 2% allowance is made for payment within a stated time, and this allowance or discount is actually taken by the customer, tax will apply to the stated price less the discount, or the amount actually paid.

For example, two customers purchase \$100 worth of taxable goods, with 2% being allowed for prompt payment. Customer A pays promptly and thus takes the 2% discount: tax is based upon a sale price of \$98. Customer B does not pay promptly and does not take the 2% discount: tax is based upon a sale price of \$100.

On the other hand, if interest is charged on overdue accounts, tax does not apply to the interest so charged.

a. Coupons. If a retailer issues a store coupon, the value of the coupon is a seller's discount which is deducted from the sale price before computing the sales tax. However, a coupon issued by a manufacturer is not a seller's discount. Tax in these situations is based on the full selling price.

b. Rebates. Rebates provided by manufacturers to purchasers of tangible personal property are not discounts allowed between the seller and the purchaser. Sales tax is computed on the total sale price without any deduction for the manufacturer's rebate. The fact that the rebate is assigned by the purchaser to the seller does not change the taxability of the transaction.

For more information on coupons and rebates, refer to Instruction Bulletin #25.

4. SERVICE CHARGES WHICH ARE A PART OF THE SALE PRICE

The definition of "sale price" says that it includes "any services which are a part of a retail sale". It also says that "sale price" shall not "include the price received for labor or services used in installing or applying or repairing the property sold or fabricated, if separately charged or stated".

In other words, the sales tax normally applies to the full charge for the goods sold, including any charges for services which are a part of the sale, except for separately stated charges for installing, applying or repairing the property sold. For example, a caterer undertakes to prepare and serve food for a reception, his charge covering not only the cost of the food, but also the cost of preparation and service. Tax applies to the entire charge, since preparing and serving the food are services which are part of the sale. Even though charges for preparation and serving are separately stated, tax would still apply to these charges, since they are not charges for "installing or applying or repairing the property sold".

a. Alteration Charges. When a merchant offers goods for sale, and undertakes to alter them to the customer's requirements, the charges for such alterations are part of the sale price on which tax is based, whether separately stated or not. For example, a customer selects a coat. However, certain alterations are necessary before the coat is satisfactory as a piece of wearing apparel for the customer. The merchant or someone contracted by the merchant performs the alterations and charges the customer an additional \$10 alteration fee. The alteration charges will be considered a part of the sale price upon which tax is based, even though such charges are separately stated.

b. Fabrication Charges. Charges for production, fabrication or processing of tangible personal property are taxable whether performed on tangible personal property belonging to the fabricator, or whether performed on tangible personal property furnished directly or indirectly by the customer. Accordingly, the point at which title passes to the customer is of no relevance in determining the taxability of such charges. For example, a customer enters into a contract with a boatbuilder to construct a boat in accordance with certain plans and specifications. The charges for the labor of building the boat would be taxable regardless of whether title to the materials passes to the customer before or after the fabrication occurs, or whether the customer purchases the materials from one or more third-party suppliers and arranges for them to be delivered to the location of the boatbuilder.

c. Assembly Charges. Some types of furniture and equipment are sold either on a knocked down, or unfinished, or on an assembled, or finished basis; the assembled or finished item being priced correspondingly higher. Charges for assembling or finishing, in such cases, are part of the taxable sale price, whether separately stated or not.

In all the above cases, the alteration, fabrication, assembly or finishing of the article sold constitute "services which are a part of (the) sale". Since they do not fall within the categories of "installing or applying or repairing the property sold", charges for these services are part of the "sale price" and are taxable whether separately stated or not.

5. CHARGES EXCLUDED FROM SALE PRICE

The definition of "sale price" not only excludes certain services but also excludes transportation which meets specific criteria.

a. Charges for Installing or Applying or Repairing the Property Sold, if Separately Stated. Such charges, if separately stated, are not part of the taxable "sale price" except in the case of telephone and telegraph service. Installation or repair of telecommunications or telegraphic equipment, whether or not separately stated, is part of the taxable "sale price".

For example, completed drapes are sold by a merchant, who also undertakes to install them at the home of the customer. Tax applies to the full charge for the drapes (see 4b, above) as well as to the charge for any hardware or other tangible personal property involved in the transaction; but the installation charges, if separately stated, are not part of the taxable "sale price".

Or, if a customer brings in a piece of furniture to be stained or painted, the merchant would charge tax on the price of the paint or stain, but would not charge tax on the charge for applying the paint or stain, if separately stated. (Note that this differs from the situation where the customer picks out the piece of furniture from the dealer's stock, but wishes it painted or stained, in which case the total charge is taxable (see 4c, above).

i. Separate Statement of Charges. In all the above cases, deduction of the service charges from the tax base is dependent on separate statements of such charges. While it is usually preferable that such charges be separately stated on the invoice to the customer, this is not essential. It is essential that there be a separate statement of such charges on record somewhere, either on the statement to the customer, or in the records of the vendor.

b. Transportation Charges. Transportation charges are not included in the taxable "sale price" if:

- i. The transportation in question is from the retailer's place of business, or some other point from which shipment is made, directly to the customer; and
- ii. Transportation is by means of common carrier, contract carrier or the United States mails; and

- iii. The transportation charges are separately stated. (As noted above, such charges need not be separately stated on the invoice, provided a separate statement is otherwise available in the records of the vendor or vendee).

All of the above three conditions must be met if transportation charges are to be deductible. For example, charges for transportation from the point of manufacture to the vendor are not deductible; nor are charges for transportation from the vendor to the vendee, if the vendor delivers in his own equipment rather than by common or contract carrier or mail.

Further information about transportation charges can be obtained from Instruction Bulletin No. 30.

c. Service Charges in Lieu of Tips. The definition of "sale price" does not include an amount charged or collected in lieu of a gratuity or tip, as a specifically stated service charge, when the amount so charged is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages. An amount or flat percentage charged or collected in lieu of a gratuity is not part of the selling price provided the gratuity is disbursed by the seller to the employee as wages. If not disbursed to the employee, the gratuity is part of the selling price.

d. Maintenance and Service Contracts. Charges for maintenance or service contracts are not part of the selling price provided the contract is optional to the customer and the charge is separately stated.

6. RETURN OF MERCHANDISE

The definition of "sale price" excludes allowances made on defective merchandise which is returned pursuant to warranty. It also excludes returned property when a full refund is given.

a. Returns Pursuant to Warranty. When an adjustment of price is made by a retailer on the return of defective merchandise which has been warranted, the adjustment, or allowance, is deductible on a subsequent sales tax return of the retailer if the original sale was taxable and was so reported by the retailer.

For example, a tire is sold with a 30-month warranty, adjustment being based upon period of use. Assuming the tire was sold for \$30.00 with an allowance of \$1.00 per month for the period by which the tire fails to meet the warranty. If the tire is returned for failure after 24 months, the allowance would be \$6.00. The purchaser would be entitled to \$6.00 plus sales tax on this amount; and the retailer would deduct \$6.00 on his next sales tax return. Usually such adjustments are made as the result of a written warranty, as in the case of an automobile tire. It is not necessary that the warranty be in writing, since there is a general unwritten warranty that goods are not defective for the purpose for which they are intended.

While an adjustment of sales tax liability may be made for allowance by warranty, whether written or not, an adjustment cannot be made where the merchandise is returned as unsatisfactory, not because of written warranty or because it is defective and so fails to meet an unwritten warranty; but because the purchaser finds it is not suited to his purpose. In the latter case, unless the full purchase price is refunded (see below, under b), no adjustment of sales tax can be made.

For example, a customer purchases a snow blower. After using it for a short time he finds it is not powerful enough to meet his particular needs. There is neither failure to meet a written warranty nor any defect in the machine. He returns it to the dealer and is allowed 85% of the original purchase price. There is no adjustment permitted so far as sales tax is concerned.

b. Return of Merchandise and Refund of Full Purchase Price. Where merchandise is returned by the customer and the full purchase price is refunded, either in cash or by credit toward other purchases, the retailer may deduct the original purchase price of the item on a subsequent sales tax return, if the original transaction was taxable and was so reported. In such a case, applicable sales tax would also be refunded to the customer.

If, in connection with such returned merchandise, the retailer makes a standard service charge, the transaction will nevertheless be considered as a refund of the full purchase price if the service charge is separately shown and so identified on the invoice to the customer or in the records of the retailer. The customer would be entitled to a refund of the entire sales tax paid on the original transaction.

For example, a retailer makes a standard service charge of \$1.00 in all cases where merchandise is returned by the customer for refund. The invoice or credit memo to the customer indicates "purchase price refunded \$30.00, less service charge \$1.00 - net \$29.00". The retailer should treat this as a refund of the full purchase price and also refund the \$1.50 sales tax originally paid on the \$30.00 sale.

Note, however, that except for deduction of a standard service charge, the refund must be of the entire purchase price. For example, if an item has been used by the customer and the retailer therefore refunds less than the full purchase price (the transaction not involving an express or implied warranty), no adjustment of sales tax can be made.

7. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES
SALES/EXCISE TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 287-2336
TTY: (207) 287-4477**

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ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

36 §1752. Definitions

11. Retail sale. "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

14. Sale price. "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

A. "Sale price" includes:

- (1) Services which are a part of a retail sale; and
- (2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.

B. "Sale price" does not include:

- (1) Discounts allowed and taken on sales;
- (2) Allowances in cash or by credit made upon the return of merchandise or with respect to fabrication services pursuant to warranty;
- (3) The price of property returned or fabrication services rejected by customers, when the full price is refunded either in cash or by credit;
- (4) The price received for labor or services used in installing or applying or repairing the property sold or fabricated, if separately charged or stated;
- (5) Any amount charged or collected, in lieu of a gratuity or tip, as a specifically stated service charge, when that amount is to be disbursed by a hotel, motel, restaurant or other eating establishment to its employees as wages;

(6) The amount of any tax imposed by the United States on or with respect to retail sales, whether imposed upon the retailer or the consumer, except any manufacturers', importers', alcohol or tobacco excise tax;

(7) The cost of transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided that those charges are separately stated and the transportation occurs by means of common carrier, contract carrier or the United States mail;

(8) The fee imposed by Title 10, 1169(11);

(9) The fee imposed by 4832(1); or

(10) The lead-acid battery deposit imposed by Title 38, 1604(2-B).

17. Tangible personal property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity.

17-A. Taxable service. "Taxable service" means:

- A. Rental of living quarters in any hotel, rooming house, tourist or trailer camp;
- B. Rental, for a period of less than one year, of an automobile;
- C. Telephone or telegraph service;
- D. Extended cable television service;
- E. Fabrication services;
- F. Custom computer programming, including, but not limited to, modification of a standard program; and
- G. Rental of video tapes and video equipment.

36 §1765. Trade-in credit

When one or more of the following items of tangible personal property are traded in toward the sale price of another of the same kind of the following items, the tax imposed by this Part shall be levied only upon the difference between the sale price of the purchased property and the trade-in allowance of the property taken in trade, except for transactions between dealers involving exchange of the property from inventory:

1. **Motor vehicles.** Motor vehicles;
2. **Farm tractors.** Farm tractors;
3. **Watercraft.** Watercraft;
4. **Aircraft.** Aircraft;
5. **Lumber harvesting vehicles or loaders.** Self-propelled vehicles or loaders used to harvest lumber;
6. **Chain saws.** Chain saws;
7. **Special mobile equipment.** Special mobile equipment;
8. **Livestock trailers.** Livestock trailers, including horse trailers; or
9. **Camper trailers.** Camper trailers.

36 §1811. Sales tax

(TEXT EFFECTIVE 7/1/00) A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A, section 2, subsection 15, in accordance with Title 28-A, chapter 43; 7% on the value of rental of living quarters in any hotel, rooming house, tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 7% on the value of prepared food sold in establishments that are licensed for on-premises consumption of liquor pursuant to Title 28-A, chapter 43; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided. [1999, c. 401, Pt. X, §1 (amd); §5 (aff).]

The tax imposed upon the sale and distribution of gas, water or electricity, or telecommunications services, by any public utility, the rates for which sale and distribution are established by the Public Utilities Commission, must be added to the rates so established. No tax may be imposed upon the sale or use of electrical energy, or water stored for the purpose of generating electricity, when the sale is to or by a wholly owned subsidiary by or to its parent corporation, except for electrical energy or water purchased for resale to or by such wholly owned subsidiary. [1999, c. 488, §11 (amd).]

36 §1861. Imposition

A tax is imposed, at the respective rate provided in 1811, on the storage, use or other consumption in this State of tangible personal property or a service the sale of which, if it had occurred in this State, would be subject to tax under 1764 or 1811. Every person so storing, using or otherwise consuming is liable for the tax until he has paid the tax or has taken a receipt from his seller, as duly authorized by the State Tax Assessor, showing that the seller has collected the

sales or use tax, in which case the seller shall be liable for it. Retailers registered under 1754-B or 1756 shall collect the tax and make remittance to the State Tax Assessor. The amount of the tax payable by the purchaser shall be that provided in the case of sales taxes by 1812. When tangible personal property purchased for resale is withdrawn from inventory by the retailer for the retailer's own use, use tax liability accrues at the date of withdrawal. PL 1995, c. 640, §6(amd).